THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 10133 OF 2006

% 03-08-2007

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Donthina Rama Kota Reddy

…Petitioner

And

$ The Assistant Registrar/Sub-Divisional
Cooperative Officer and Sales Officer,
Kovvuru, West Godavari District & another

…Respondents

! COUNSEL FOR PETITIONER: Mr.C. Raghu

^ COUNSEL FOR RESPONDENTS: G.P. for Cooperation Smt.Bobba Vijayalakshmi

< Gist:

> Head Note:

? CITATIONS:

-Nil-

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 10133 OF 2006

Dated 3rd August 2007

Between:

Donthina Rama Kota Reddy

…Petitioner

and

The Assistant Registrar/Sub-Divisional
Cooperative Officer and Sales Officer,
Kovvuru, West Godavari District & another

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 10133 OF 2006

O R D E R:

The petitioner feels aggrieved by an order, dated 18.3.2006, passed by the Assistant Registrar/Sub-Divisional Cooperative Officer, Kovvur, the 1st respondent herein. The brief facts, that gave rise to the filing of the writ petition, are as under:

The land in Survey No.185/2 was owned by one Sri Vintha Subba Reddy. He obtained different kinds of loans from the 2nd respondent Cooperative Society. The land in Sy.No.185/2 was mortgaged by document No.25 of 2001/2002, with the 2nd respondent. Petitioner herein purchased an extent of Acs.1-57½ cents, out of the land in Survey No.185/2, through a sale deed, dated 17.01.2003. When steps were taken to redeem the mortgage, the petitioner arranged for necessary funds and the entire loan amount was cleared on 29.6.2005.

Vintha Chandra Reddy S/o.Subba Reddy, the original owner of the land, was employed as Secretary in the 2nd respondent society. Surcharge proceedings, alleging lapses, were initiated against him

and the Ex-President, under Section 60 of the A.P. Cooperative Societies Act, 1964 (for short "the Act"). An order was passed fastening the liability at Rs.14,91,000/-. To realize that amount, the land in Survey No.185/2, including the one purchased by the petitioner, was sought to be sold. At that stage, the petitioner filed a claim petition before the 1st respondent, under Rule 52 of the A.P. Cooperative Societies Rules, 1964 (for short "the Rules"). Through the impugned order, the 1st respondent rejected the claim of the petitioner.

Petitioner contends that with the discharge of the loan raised by his vendor, the sale in his favour became absolute, and there was no basis for the respondents, to proceed against the property.

The 1st respondent filed a counter affidavit, narrating the circumstances that led to the dismissal of the claim petition.

On behalf of 2nd respondent, a counter affidavit is filed, stating that the sale in favour of the petitioner was at a time, when the mortgage was subsisting, and in that view of the matter, no exception can be taken to the impugned order. It is further contended that the Ex-Secretary is none other than the mortgagor's own son, and though not under the transaction of mortgage, the property can be proceeded to recover the amount covered by surcharge order.

Heard Sri C.Raghu, learned counsel for the petitioner, learned Government Pleader for Cooperation, and Smt.Bobba Vijayalakshmi, learned counsel for the 2nd respondent

The property in question was mortgaged to the 2nd respondent in the year 2001, as a security for repayment of loan obtained by Sri Vintha Subba Reddy. The petitioner purchased the equity of redemption, through a sale deed dated 17.01.2003. Such a

sale was subject to clearance of the loan covered by a mortgage. It is not in dispute that the loan transaction, for which the property was mortgaged, has been cleared. It becomes immaterial whether the amount was paid by the petitioner, or somebody else. The inevitable consequence is that with the clearance of the loan, the equity of mortgage, in favour of the petitioner, gets transformed itself into an absolute sale. The mere possession of documents by 2nd respondent, would not make any difference.

Had it been a case where the property is sought to be proceeded to recover the loan amount, the sale in favour of the petitioner, subsequent to the mortgage, would not have been of any help. The respondents sought to proceed against it, to recover the amount determined in the surcharge proceedings against the Ex-Secretary. That gentleman is neither the owner nor a mortgagor. The mere fact that the property was owned by the father of the Ex-Secretary does not cloth the respondents, with the right to proceed against the property, that too, after it was sold in favour of the petitioner herein.

The claim statement submitted by the petitioner was taken up by the 1st respondent, but he did not state any reasons in support of his conclusion. The fact remains that the petitioner became the owner of the property with the discharge of the debt incurred by the vendor of the property. Therefore, the impugned order cannot be sustained in law. Since the record clearly discloses that the sale in favour of the petitioner became absolute and the property sought to be proceeded for a totally unrelated transaction, the claim petition deserves to be allowed.

Hence, the writ petition is allowed, and the impugned order is set aside. Consequently, the claim petition submitted by the petitioner

shall stand allowed. It is, however, made clear that it shall be open to the 2nd respondent, to proceed against the other properties held by the Ex-Secretary, to enforce the surcharge order.

There shall be no order as to costs.

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3rd August 2007

Note: L.R.copies be marked.
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